

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

VICTOR M. JAVITCH, RECEIVER,

Plaintiff,

Case No. 3:02 CV 520

-vs-

3:02 CV 1581

JOHN BUCHOLTZ,

O R D E R

Defendant.

KATZ, J.

This matter is before the Court in the consolidated cases of *Javitch v. Bucholtz*, Case No. 1:02 CV 1581 and *Wuliger v. Bucholtz*, Case No. 1:02 CV 520. These cases have been present on this Court's docket for nearly three years and in the absence of an agreed resolution between the parties, the time has come for adjudication in one form or another.

*A. Case No. 1:02 CV 1581*

With regard to the *Javitch* case, the Court notes that on January 21, 2004, the Plaintiff filed his first amended complaint (Doc. No. 42) which contained new claims. Over a year later, on February 28, 2005, Plaintiff filed an application and motion for default.

While the Plaintiff's application for default avers service of the original complaint, the pleading of additional claims against a party in default require service under Fed. R. Civ. P. 4. *See generally*, 1 James Wm. Moore, Moore's Federal Practice, §5.03[4] (3d ed. 2004) and cases cited therein. The docket does not reflect service of the amended complaint upon the Defendant. Absent service of the

amended complaint, the Court cannot, at this juncture, approve the request for default. Accordingly, in Case No. 1:02 CV 1581, Plaintiff's motion for default (Doc. No. 43) is denied without prejudice.

*B. Case No. 1:02 CV 520*

With regard to the *Wuliger* case, the Court held a telephonic status conference on May 2, 2005 and requested a status report by June 2, 2005. Counsel have not complied with the Court's order of a status report. Accordingly, the Plaintiff is ordered to show cause why this case should not be dismissed for want of prosecution. Plaintiff to file its response to this Order by June 17, 2005.

**CONCLUSION**

Accordingly, in Case No. 1:02 CV 1581, Plaintiff's motion for default (Doc. No. 43) is denied without prejudice. Regarding Case No. 1:02 CV 520, Plaintiff has until June 17, 2005 to show cause why this case should not be dismissed.

IT IS SO ORDERED.

s/ David A. Katz  
DAVID A. KATZ  
SENIOR U. S. DISTRICT JUDGE